

CASE NO. 16-71915 [CONSOLIDATED WITH 17-70532 AND 17-70632]
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT C. MUNOZ,

Charging Party,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

TARLTON & SON, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

TARLTON & SON, INC.

Respondent.

Case No. 16-71915

Board Case Nos.
32-CA-119054
32-CA-126896

Case No. 17-70532

Board Case Nos.
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Case No. 17-70632

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**ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD
CASE NO. 32-CA-119054 AND 32-CA-126896, 363 NLRB NO. 175**

OPPOSITION TO MOTION TO HOLD CASE IN ABEYANCE

The Motion of the National Labor Relations Board to hold this case in abeyance should be denied.

As the Board recognizes, it presented the very same issue to this Court in *Int'l Ass'n of Machinists & Aerospace Workers AFL-CIO v. NLRB*, 9th Cir. No. 16-84025 and this Court denied the motion. In that case, the Union (represented by the same counsel) pointed out that the Federal Arbitration Act arguably did not govern the arbitration procedure involved and that the issues were therefore different.

Here, there are even more differences. One of the major differences is that part of the Board's Decision is the finding that the Respondent employer unlawfully implemented its Mutual Arbitration Procedure in response to protected concerted activity. That finding does not hinge on whether the policy is valid or invalid. It hinges on the fact that the policy was implemented in response to the protected concerted activity.

The Petitioner and Intervenor opposes the Motion to Hold this Case in Abeyance. The cases pending in the Supreme Court will not ultimately resolve the issues in this case.

For these reasons, this Court should adopt his Court's ruling in the *Machinists* case referred to above and deny the Motion to Hold the Case in Abeyance.

Dated: March 31, 2017

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on March 31, 2017, I electronically filed the foregoing **OPPOSITION TO MOTION TO HOLD CASE IN ABEYANCE** with the with the United States Court of Appeals, Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct.
Executed at Alameda, California, on March 31, 2017.

/s/ Karen Kempler
Karen Kempler